

Schiff Hardin LLP
Andrew M. Minear, No. 27817
666 Fifth Avenue, Suite 1700
New York, NY 10103
Telephone: 212.745.9538
Facsimile: 212.753.5044
Email: aminear@schiffhardin.com

and

Matthew F. Prewitt (admitted *pro hac vice*)
Michael K. Molzberger (admitted *pro hac vice*)
233 South Wacker Drive
Suite 6600
Chicago, IL 60606
Telephone: 312.258.5500
Facsimile: 312.258.5600
Email: mprewitt@schiffhardin.com
mmolzberger@schiffhardin.com

*Attorneys for Creditors Bunnett & Co., Inc. and
Energy Feeds International, LLC*

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA – FRESNO

In re:

FRANK MIRANDA DORES and
MARY ANNE SOUZA DORES,

Debtors.

Case No. 16-10169-B-13

Chapter 13

D.C. No.: AMM-2

Date: September 14, 2016
Time: 1:30 p.m.
Place: Dept. B, Ctrm. 13, 5th Floor
United States Courthouse
2500 Tulare St., Fresno, California
Judge: Hon. René Lastreto

**BUNNETT & CO., INC. AND ENERGY FEEDS INTERNATIONAL, LLC’S
MOTION TO DISMISS**

Creditors Bunnett & Co., Inc. and Energy Feeds International, LLC (collectively, the
“Bunnett Parties”), by and through their undersigned counsel, respectfully move to dismiss the

1 Debtors' bankruptcy petition with prejudice pursuant to 11 U.S.C. § 1307(c) and 11 U.S.C. §
2 349(c) because of the Debtors extreme bad faith.

3 INTRODUCTION

4 Discovery has revealed that the Debtors have repeatedly lied to the bankruptcy court.
5 They lied about Mr. Does' ability to work, his competitive work in the dairy industry, and his
6 business income. The Debtors introduced those lies to this Court, despite the fact that the Western
7 District of Texas admonished Mr. Does for making the same exact statements that looked like
8 "perjury" to that court.
9

10 In fact, the Debtors have repeatedly committed perjury to conceal the substantial business
11 income that Mr. Does was receiving at the same time he claimed disability. The Debtors gave
12 false declarations and false deposition testimony in multiple court proceedings over the entire
13 period of his claimed disability in order to conceal his business activities and the income resulting
14 from those activities. Indeed, the Does lied about their substantial business income to this Court.
15

16 Discovery has revealed that the Debtors participated in an elaborate scheme to conceal
17 payments to Mr. Does by one of the Bunnett Parties' former suppliers, Wawasan Agrolipids
18 SDN BHD ("Wawasan") and its American agent Agrofin, Inc. ("Agrofin"), who is now a direct
19 competitor of the Bunnett Parties. Mr. Does, fearful of a lawsuit, attempted to hide his work on
20 behalf of Wawasan, but the documents show that the Does received at least \$60,000 in
21 unexplained payments from Wawasan between November 2015 and May 2016. These payments
22 were made in violation of a temporary restraining order entered against Mr. Does immediately
23 prior to the commencement of this bankruptcy case, were continued during this bankruptcy case,
24 were never disclosed by the Debtors in this bankruptcy case, and were deliberately structured for
25 the express purpose of concealing the payments from the Debtors' creditors.
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1 Even after the Bunnett Parties' lawyers demanded an explanation for the payments, the
2 Does submitted sworn declarations in which they suggest Mr. Does had no role in arranging the
3 payments, provided no professional services in exchange for these payments, and never benefited
4 from the payments. However, their friends and family have admitted in depositions that Mr.
5 Does contacted them before they received the payments and asked them to help him by accepting
6 the payments on his behalf. Document discovery has also revealed that Mr. Does gave
7 instructions to Wawasan's agents and provided the names and addresses of the persons who had
8 agreed to accept the funds on his behalf.
9

10 The Debtors bankruptcy petition should be dismissed with prejudice because of their bad
11 faith and egregious behavior. The Debtors misrepresented facts in their petition, unfairly
12 manipulated the Bankruptcy Code, and filed and executed a Chapter 13 petition and plan in an
13 inequitable manner to defeat litigation filed by the Bunnett Parties in the Western District of
14 Texas. Additionally, Mr. Does has attempted to perpetrate a fraud on the court by submitting an
15 affidavit to this Court that was very similar to the one that the District Court described as
16 "looking very much like perjury." This type of behavior should not be tolerated by the bankruptcy
17 court and the Debtors' case should be dismissed with prejudice.
18

19 **FACTUAL BACKGROUND**

20
21 Mr. Does is the former general manager of the Bunnett Parties. The dispute between the
22 Bunnett Parties and Mr. Does arises from his abrupt resignation in October 2015 and his
23 orchestration of a scheme for the Bunnett Parties' sales representatives to resign *en masse* and
24 enter into business directly with the Bunnett Parties' suppliers and customers, including Wawasan
25 and its U.S. subsidiary, Agrofin, in competition with the Bunnett Parties. When he left the
26 Bunnett Parties' employ, Mr. Does misappropriated critical competitive information from the
27 Bunnett Parties, leading to a lawsuit, in the Western District of Texas, and two TROs prohibiting
28

1 Mr. Does from conducting business with any supplier or customer that he worked with during
2 his employment with the Bunnett Parties.

3 Until the fall of 2015, Bunnett & Co. was the exclusive distributor of Wawasan products
4 in the United States and had been since 2008. After Mr. Does left the Bunnett Parties and took
5 the Bunnett Parties' sales representatives with him, Wawasan began importing its products
6 directly to the United States and selling them through California-based company Agrofin to the
7 Bunnett Parties' customers. Mr. Does, Ray Gearheart, and John Franklin (two other former
8 Bunnett Parties sales representatives), solicited the Bunnett Parties' customers on behalf of
9 Wawasan and assisted Wawasan to arrange its logistics for product storage and transport. *See*
10 *e.g.*, Exs. E, J.

11
12 **A. The Scheme to Funnel the Debtors Money Begins Shortly After Mr. Does**
13 **Resigns from the Bunnett Parties**

14 Discovery has revealed that the Debtors received at least \$60,000 in unexplained
15 payments from Wawasan between November 2015 and May 2016. The Debtors have asserted
16 that they did provide any services to Wawasan and that these payments were entirely gratuitous.
17 Exs. G, H. The elaborate means used to conceal the payments belie their protestations of
18 innocence.

19
20 The Debtors received their first payment from Wawasan almost immediately after Mr.
21 Does resigned from the Bunnett Parties in October 2015. A few weeks before he resigned, the
22 Debtors formed a new company, FM Ag Enterprises, Inc. The fictitious name of the business is
23 "Mary Anne Appraisal," yet it "will own and operate an Agriculture Services and Sales
24 Business," Mr. Does is listed as the CEO and he is the only one who will receive a regular salary
25 from the business. Ex. L, M.A. Does Dep Ex. 1-2. In fact, a mysterious \$20,000 payment from
26 Wawasan's affiliate to Ms. Does was the very first revenue received by FM Ag. Ex. L, M.A.
27 Does Dep. 110:13-16. An entity affiliated with Wawasan, Paros Corporation PTE LTD
28

1 (“Paros”),¹ FM Ag Enterprise, Inc. \$19,975.00 on November 17, 2015. Ex. L, M.A. Does Dep.
2 109:8-110:16. Ms. Does testified that Paros, a company that she did not know and contacted her
3 unexpectedly, paid her nearly \$20,000 for a 9-10 page industry trend report that took her a few
4 days to write. Ex. L, M.A. Does Dep. 77:1-84:5. She did not retain a copy of the report. Ex. L,
5 M. A. Does Dep. 74:7-23, 82:9-84:9.

7 **B. Mr. Does Files a Fraudulent Disability Claim To Disguise His Work for**
8 **Competitors**

9 As part of their scheme to conceal Mr. Does’ motives in resigning from the Bunnett
10 Parties, the Does submitted first a claim for workers’ compensation and then for California
11 disability benefits, in both instances based on the representation that Mr. Does was suffering
12 from debilitating work-related stress. This was an obvious sham. Mr. Does used a law firm to
13 help him with his benefits claim and, incredibly, used the *same* law firm to negotiate a complex
14 business agreement for Mr. Does to become a sales representative for the eastern United States
15 for one of the Bunnett Parties’ suppliers. Ex. M, Disability Paper Work; Ex. N, Sousa Dep.
16 105:14-17. In short, Mr. Does was negotiating for a high-compensation and high-stress job that
17 was almost exactly the same sort of work that he had done for the Bunnett Parties and that he
18 claimed he was too ill to perform. Mr. Does actually admitted to one his business associates that
19 his disability claim was a mere sham that he and his attorney had devised to conceal his activities
20 and protect him from litigation. Ex. O, Email between R. and T. Gearheart.

22 **C. In an Attempt to Avoid an Injunction, Mr. Does Files a False Declaration**

23 Based on evidence of Mr. Does’ misconduct as he was leaving the company, on
24 November 24, 2015, the Bunnett Parties filed suit in Texas state court against Mr. Does for
25 breach of his fiduciary duties and theft of trade secrets. On that same day, the state court entered
26

27 ¹ Corporate records report for Paros show that Yap Wai Joon is a director and the sole shareholder
28 of Paros. Ex. P. He is also a significant shareholder of Wawasan. Ex. P.

1 a TRO prohibiting Mr. Does and “any persons in active concert or participation with Does”
2 from (among other things) “[d]irectly or indirectly soliciting, either on behalf of himself or any
3 other person, employer or entity, for the purpose of creating a contractual or other business
4 relationship with any customer or supplier of [the Bunnett Parties] with whom Does had contact
5 or for whom he performed services during his employment with [the Bunnett Parties].” Ex. A.

6
7 Mr. Does removed the Bunnett Parties’ case to the Western District of Texas on
8 December 7, 2016, the day before the state court hearing to extend the TRO. *Bunnett & Co. v.*
9 *Does*, Western District of Texas, Case No. 15-01104, Dkt. No. 1. In the time between the
10 expiration of the first TRO, on December 8, 2016, and the entry of the second TRO by this Court
11 on January 13, 2016, Ray Gearheart told a potential customer that he was currently in business
12 with Mr. Does and Mr. Franklin, that they want to sell the customer Palm products (which is
13 what Wawasan produces), and that “[t]he three of us developed the sales for Bunnett co. and are
14 interested in providing product to the accounts we developed and continue to expand the
15 volume.” Ex. J.

16
17 At the District Court’s TRO hearing, it became evident to the Court that Mr. Does had
18 submitted a false declaration denying his competitive business activities and claiming instead to
19 suffer from debilitating, work-related stress that supposedly had rendered him disabled.
20 Regarding these assertions, Magistrate Judge Austin forcefully rebuked Mr. Does and his
21 counsel on the record:
22

23 THE COURT: Well, I got to say, you know, I'm sitting up here keeping my mouth
24 shut for a while, but you made representations to the Court on behalf of your
25 client, Mr. Richie, and Mr. Does, more importantly, has made sworn testimony to
this Court that is looking very much like perjury.

26 I'm looking at his affidavit where he says, "I am not involved in any business
27 competing with the The Bunnett Parties. I have not worked since I left working for
the The Bunnett Parties. I'm presently unemployed. I did not keep any documents
28 of the company."

1 These are sworn statements directly relevant to this case. They look like perjury to
2 me. And I don't mean to select mistakes or oopses or false statements. They look
3 like perjury.

4 This is the same man who says he can't be here because it would be life-
5 threatening to be here today. I'm seeing e-mails and testimony that is directly
6 inconsistent with sworn testimony to me and to the Court about what he's doing.

7 And I told you yesterday I was skeptical of his claims, and now I'm beyond
8 skeptical. This man's trying to commit a fraud on the Court.

9 MR. RICHIE: If I may respond, Judge.

10 THE COURT: And I think you need to be very careful in what you're representing
11 to the Court here about Mr. Does. I understand he thinks he has the right to do
12 what he's doing, and that's not what I'm talking about. I'm talking about what he
13 has said factually, and I'm not happy.

14 MR. RICHIE: He'll have to answer that for himself, Judge. All I can tell you, is
15 that what you're getting from Mr. Golden is a story that is not accurate. For
16 example, that Natural –

17 THE COURT: I'm not talking about anything Mr. Golden has said. I'm talking
18 about e-mails Mr. Does has authored, after he left his employment with Bunnett
19 & Co. and EFI, clearly soliciting business and doing work in this same feed
20 business, and he has sworn under oath that he is not doing that.

21 [...]

22 THE COURT: If that's the way he is going to interpret his activities that I'm seeing
23 here, or if that's the way you are going to argue them, again, you are on very thin
24 ice.

25 Ex. Q, January 13, 2016 Hearing Transcript at 111:18-114:9.

26 The District Court entered a TRO against Mr. Does and “any persons in active concert or
27 participation with Does” from directly or indirectly soliciting or forming any contractual or other
28 business relationship with any customer or supplier of the Bunnett Parties. Ex. B. The Court also
restrained Mr. Does from “discuss[ing] any business relationship” with “any customer or
supplier of [the Bunnett Parties] with whom Does had contact of [sic] for whom he performed
services during his employment with [the Bunnett Parties].” Ex. B.

C. The Debtors Files for Bankruptcy to Evade the TRO and Discovery.

1 Mr. Does then evaded further litigation in the Western District of Texas by filing this
2 bankruptcy petition, in support of which he submitted the very same affidavit that he had
3 submitted to Magistrate Judge Austin, making the very same assertions about disability and being
4 unable to work that Magistrate Judge Austin had described as perjury and a fraud on the court.
5 Dkt. No. 11, Does Decl. ¶ 15.
6

7 **D. The Scheme to Funnel Money to the Debtors Continues**

8 Discovery has revealed that the arrangements for the secret payments from Wawasan were
9 conducted in tandem with preparation for the Does' bankruptcy filing. Ex. R, JDH009286. At
10 the same time that the Does were working with their bankruptcy counsel to prepare their petition,
11 they were also arranging secret payments in an effort to defraud the bankruptcy court, the
12 disability system, and violate the TRO. Ex. R, JDH011952-011953.
13

14 The scheme is well documented in emails among Wawasan and Ray and Todd Gearheart.
15 On January 11, 2016, in an email with the subject line, "Money for Frank," Ray Gearheart asked
16 his son, Todd Gearheart if he can "push" money from "Gareth" (Wawasan) to him and he
17 suggests having Frank's wife, Mary Ann Does, invoice Todd to paper the transaction. Ex. R,
18 JDH009314. In an email chain on January 13, 2016, Ray and Todd discuss how Todd will invoice
19 Wawasan, receive \$40,000 from "Wawa" (Wawasan) and then send it to people other than Mr.
20 Does who will then "loan Frank the money." Ex. R, JDH009312-13. Ray tells Todd that "[t]he
21 bad part of that is Bunnetts lawyers [sic] are watching [Frank's] company like hawks. You may
22 want to send out 2-3 checks to different people that will then loan Frank the money." *Id.*
23

24 Todd's bank account records show that he received a wire transfer from Wawasan on
25 January 26, 2016 in the amount of \$20,000 and, the next day, he issued checks to Marcio Relva
26 and Angel Hernandez for \$5,000 and \$15,000, respectively. Ex. S. Mr. Relva is Mr. Does'
27 brother-in-law and Mr. Hernandez is Mr. Does' neighbor. Dkt. No. 143, Does Decl. ¶ 2(b)(i),
28

1 (iv); Ex. I, Relva Dep. 8:1-14:17. Wawasan made a second wire transfer to Todd in March 2016
2 and Todd again cut checks – this time to Mr. Hernandez and Mr. Dore's grandmother. Ex. S.

3 Mr. Relva testified that Mr. Dore's contacted him, told him to expect money to come to
4 him that was for Mr. Dore's. Ex. I, Relva Dep. 8:1-14:17. Mary Dore's, Mr. Dore's mother,
5 testified that Mr. Dore's contracted her and told her that a check would be coming to his
6 grandmother. Ex. T, M. Dore's Dep Tr. 21:5-23:25. Mr. Hernandez testified that he received
7 checks for Mr. Dore's benefit, he had talked to either Ray or Todd about the checks, and he
8 would have turned the money over to Mr. Dore's, if asked. Ex. U, A. Hernandez Dep. 11:5-22:13.
9 Instead, at Ms. Dore's instruction, he got a cashier's check for the money he had received from
10 Mr. Gearheart and gave it to Mr. Fear, the Debtors' bankruptcy attorney. *Id.* at 24:2-25.

11
12 The Debtors have confirmed these payments in a sworn declaration that he filed with this
13 Court. Dkt. No. 143, Ex. G, H. Incredibly, they assert that they were passive participants in the
14 scheme, neither requesting nor making any use of the funds. However, it is obvious that the
15 Debtors actively participated in this scheme. Mr. Dore's worked closely with Wawasan during his
16 employment with the Bunnett Parties. Wawasan made the secret payments to specific trusted
17 friends and family members of the Debtors– a neighbor and Mr. Dore's brother-in-law – who
18 could have been known to Wawasan and the Gearhearts only if the Debtors, or someone working
19 on his behalf, had first supplied their names and contact information. Indeed, Mary Dore's and Mr.
20 Hernandez's testimony confirms Mr. Dore's involvement.

21
22 The Debtors did not disclose these payments in their bankruptcy schedules, were not
23 forthcoming about the payments until presented with evidence from the Bunnett Parties'
24 attorneys, and the secret payments show that the Debtors engaged in an intentional fraud upon
25 this Court to conceal substantial monies that the Debtors received from their business associates
26 during the bankruptcy case. These secret payments, along with Mr. Dore's false declaration, more
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1 than justify the dismissal of the Debtors' bankruptcy and the Bunnett Parties' motion should be
2 granted.

3 **ARGUMENT AND AUTHORITIES**

4 The Court should dismiss the Debtors' bankruptcy case with prejudice because their
5 dishonesty has "pervaded the proceedings," the Debtors filed this litigation to avoid the Bunnett
6 Parties litigation in the Western District of Texas, and egregious behavior is present. *See In re*
7 *Leavitt*, 171 F.3d 1219, 1225 (9th Cir. 1999). The Debtors intentionally and fraudulently
8 concealed monies from the bankruptcy court, Mr. Dores filed a perjurious declaration after being
9 admonished by Magistrate Judge Austin, and allowing the Debtors to continue to enjoy the
10 protections of the bankruptcy court would be inequitable to the Debtors' creditor, including the
11 Bunnett Parties.
12

13
14 "Bad faith, as cause for the dismissal of a Chapter 13 petition with prejudice, involves the
15 application of the 'totality of the circumstances' test." *In re Leavitt*, 171 F.3d at 1224. The
16 bankruptcy court should consider the following factors:

- 17 (1) whether the debtor 'misrepresented facts in his [petition or] plan, unfairly
18 manipulated the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or]
19 plan in an inequitable manner,'
20
21 (2) 'the debtor's history of filings and dismissals,'
22
23 (3) whether 'he debtor only intended to defeat state court litigation,' and
24
25 (4) whether egregious behavior is present.

26 *Id. quoting In re Eisen*, 14 F.3d 469, 470 (9th Cir.1994),

27 The bankruptcy court does not have to find that the debtor had fraudulent intent to find
28 bad faith. *Id.* And, the bankruptcy court has the power to dismiss a case with prejudice "for
cause." *In re Leavitt*, 171 F.3d at 1223; 11 U.S.C. 1307(c); 11 U.S.C. § 349(a).

1 **I. THE CASE SHOULD BE DISMISSED BECAUSE DORES' DISHONESTY HAS**
2 **PERVADED THE CASE**

3 **A. The Debtors Pre-Petition Conduct and False Declarations Show Bad Faith**

4 The Debtors' bankruptcy filing is just the latest in a string of falsehoods and lies. Before
5 resigning from the Bunnett Parties or filing for bankruptcy, Mr. Dore stole a large amount of
6 data from Bunnett Parties, he wiped his laptop hard drive, and erased the memory on his work
7 iPad. Mr. Dore lied about retaining Bunnett Parties documents in sworn interrogatory statements.

8 After filing for bankruptcy, Mr. Dore lied to this Court about his ability to work in the
9 declaration he filed in support of his bankruptcy petition. Dkt. No. 11, Dore Decl. ¶ 3, 15. Nearly
10 immediately after Mr. Dore resigned, he contacted the president of one of the Bunnett Parties'
11 key suppliers, and hired an attorney to negotiate a sales representative agreement with that
12 supplier. That job is a high-stress position that would have required extensive travel around the
13 eastern half of the United States. Yet, at the same time Mr. Dore was negotiating for a new sales
14 job, he applied for (and received) disability benefits, again with the assistance of counsel.

15 Mr. Dore also lied in his bankruptcy declaration about engaging in competitive business
16 with the Bunnett Parties. Dkt. No. 11, Dore Decl. ¶ 15. Documents produced in discovery show
17 that Mr. Dore negotiated with the Bunnett Parties' key suppliers and competitors. The state court
18 TRO and the threat of a federal court TRO did not deter Mr. Dore from continuing to compete
19 with the Bunnett Parties. In early January, Ray Gearheart told a potential customer that he was
20 currently in business with Mr. Dore and Mr. Franklin and they wanted to continue to expand the
21 business they had developed at the Bunnett Parties.

22 Magistrate Judge Austin, who had only reviewed the documents the Bunnett Parties had
23 access to in January — far more showing Mr. Dore's competitive activities have been produced
24 since then, warned Mr. Dore at the January 2016 TRO hearing that his statements were
25 perjurious:
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1 THE COURT: I'm looking at his affidavit where he says, "I am
2 not involved in any business competing with [the Bunnett Parties].
3 I have not worked since I left working for the [the Bunnett Parties].
4 I'm presently unemployed. I did not keep any documents of the
5 company."

6 These are sworn statements directly relevant to this case. They
7 look like perjury to me. And I don't mean to select mistakes or
8 oopses or false statements. They look like perjury.

9 [. . .]

10 I'm talking about e-mails Mr. Does has authored, after he left his
11 employment with Bunnett & Co. and EFI, clearly soliciting
12 business and doing work in this same feed business, and he has
13 sworn under oath that he is not doing that.

14 Ex. Q.

15 Notwithstanding the District Court's admonishment, the Debtors filed their bankruptcy
16 petition and introduced the same lies into this proceeding. Mr. Does submitted a declaration that
17 is nearly identical to the declaration the District Court strongly suggested was designed to commit
18 a fraud upon the Court. *Compare* Does District Court Affidavit, attached to the Minear RFS Dec.
19 as Exhibit I, ¶¶ 1-14, *with* Does Affidavit in support of Motion, Dkt. No. 11, ¶¶ 10-24. Mr.
20 Does is using the same lies in a different court, but his objective remains the same – conceal his
21 actions and use any means necessary to prevent the Bunnett Parties from obtaining and enforcing
22 an injunction.

23 Ms. Does' bankruptcy deposition testimony about pre-petition conduct also shows a
24 penchant for dishonesty. Prior to filing for bankruptcy, Ms. Does received a \$20,000 payment for
25 a 9-10 page report on dairy industry trends that she prepared for a company that she claims she
26 had never heard of before, that contacted her out of the blue, and she did not retain a copy of the
27 report. Ms. Does' testimony strains belief and is clearly not the entire story. It is far more likely
28 that the Paros payment was money paid to compensate Mr. Does for work he performed for

1 Paros' affiliate, Wawasan, than for an industry trend study performed by a stranger that cost
2 \$2,000 per page.

3 **B. The Debtors Post-Petition Conduct Shows Bad Faith**

4 The Debtors' post-petition conduct further documents the bad faith that the Debtors have
5 infused into this proceeding. The Debtors actively worked to conceal secret payments Wawasan
6 made to their friends and neighbors for their benefit from the bankruptcy court and the Bunnett
7 Parties. The Debtors did not disclose these payments to the bankruptcy court, nor have they
8 volunteered to amend their petitions to reflect these payments.
9

10 Incredibly, after the Bunnett Parties confronted the Debtors with evidence of these
11 payments, the Debtors signed sworn declarations disclaiming knowledge of the payments and
12 asserting that neither one of them had engaged in any competitive business with the Bunnett
13 Parties between January 1, 2016 to June 16, 2016. These declarations are demonstrably false.
14 Mary Does testified that Mr. Does Mr. Does contracted her and told her to expect the payment.
15 Mr. Hernandez testified that he knew he would be receiving the checks, that the money was for
16 Mr. Does, and he would have turned the money over to Mr. Does, if asked. Moreover,
17 documents show that Mr. Does was working with Ray Gearheart and Mr. Franklin in January
18 2016 to compete with the Bunnett Parties.
19

20 The Does received multiple payments from Wawasan over the course of the bankruptcy
21 case. Thus, their false representations to this Court and the creditors were not simply to conceal
22 past misconduct; they were part of an ongoing scheme that the Does were able to carry out only
23 because of their false disclosures in this bankruptcy case. The Does first concealed the payments
24 in their bankruptcy disclosures accompanying their petition, they again concealed these
25 continuing payments with false testimony during their Section 341 meeting of creditors, and false
26 affidavits and deposition testimony in contested matters with the Bunnett Parties. They had
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1 numerous opportunities to purge their fraud their fraud, but instead they double down and
2 continue to lie about their business activities and income. *See e.g.*, Ex. L, M.A. Does Dep. 74:7-
3 23, 77:1-84:9, 109:8-110:16.

4 **C. The Debtors' Egregious Conduct Requires Dismissal**

5 As discussed above, the Debtors' egregious conduct has pervaded this proceeding – they
6 have lied at every stage and their bad faith is apparent. They have made material
7 misrepresentations to this Court and have manipulated the bankruptcy protections to their
8 strategic advantage. Even the timing of their petition is suspicious and a marker of bad faith: the
9 Debtors filed 9 days after Mr. Does was admonished by the Magistrate Judge Austin. *See In re*
10 *Ellsworth*, 455 B.R. 904, 920 (9th Cir. BAP 2011) (“The record established that the Ellsworths
11 filed bankruptcy on the heels of the Injunction Litigation.”).² There is also good reason to believe
12 that the Does have other hidden assets. At deposition, even though Mr. Does has supposedly
13 suffered a dramatic drop in income and has no expectation of returning to his former high-income
14 bracket, Ms. Does could not identify corresponding dramatic changes in lifestyle or reduction in
15 expenses. Ex. L, M.A. Does Dep. 167:25-169:10

16 Given the District Court's harsh evaluation of Mr. Does' veracity for the truth and the
17 documentary evidence and testimony of third parties contradicting the Debtors' sworn statements,
18 their falsehoods “cannot be considered to be innocent” and the egregiousness of their conduct is
19 evident. *See In re Leavitt*, 171 F.3d at 1225. The Debtors have attempted to commit a fraud on
20 this Court in furtherance of their plan to avoid litigation in the Western District of Texas and
21 continue their tortious conduct towards the Bunnett Parties unchecked. Their dishonesty and
22

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24
25 ² The Does' stated bases for petitioning for bankruptcy were outstanding and ongoing legal fees
26 and those bases have disappeared. Ex. V, F. Does Dep, 19:3-9. Mr. Richie, has since waived his
27 claim to the \$50,000 in outstanding legal fees Ex. V, F. Does Dep., 19:25-20:3. Moreover, it
28 appears likely that Does future litigation expenses will be covered by a third party. *See* Ex. V, F.
Does Deposition Excerpts, at 16:25-17:6.

1 misconduct cannot be allowed to run unabated. Based on this showing of abundant bad faith,
2 misrepresentations, and manipulation of the bankruptcy code, the Court should grant the Bunnett
3 Parties' motion and dismiss the bankruptcy case.

4 **II. CAUSE EXISTS TO DISMISS THE BANKRUPTCY WITH PREJUDICE**

5 The Debtors' extreme bad faith justifies a dismissal with prejudice. *In re Leavitt*, 171 F.3d
6 at 1226. The Debtors have repeatedly lied to this Court and prevailed upon its protections with
7 improper motives. Such deliberate misconduct warrants a dismissal with prejudice, meaning that
8 the Debtors will be "precluded from ever again seeking to discharge those debts which would
9 have been discharged had the plan been confirmed and completed." *In re Ellsworth*, 455 B.R. at
10 921. Dismissals with prejudice have been imposed for less serious misconduct such as failing to
11 file schedules or attend the meeting of creditors and filing bankruptcy to avoid paying federal
12 taxes. *In re Leavitt*, 171 F.3d at 1226. A dismissal with prejudice is appropriate here to check the
13 Debtors abuses of the bankruptcy court.
14
15

16 **CONCLUSION**

17 WHEREFORE, the Bunnett Parties respectfully requests that the Court grant its motion
18 and dismiss the Debtors' case with prejudice. The Bunnett Parties further request such other and
19 further relief as this Court deems fair and equitable.
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1 Dated: August 17, 2016

Schiff Hardin LLP

2 By: /s/Andrew M. Minear
3 Andrew M. Minear, No. 278173
4 666 Fifth Avenue, Suite 1700
5 New York, NY 10103
6 Telephone: 212.745.9538
7 Facsimile: 212.753.5044
8 Email: aminear@schiffhardin.com

and

9 Matthew F. Prewitt (admitted *pro hac*
10 *vice*)
11 233 South Wacker Drive
12 Suite 6600
13 Chicago, IL 60606
14 Telephone: 312.258.5500
15 Facsimile: 312.258.5600
16 Email: mprewitt@schiffhardin.com

17 *Attorneys for Creditors Bunnett & Co.,*
18 *Inc. and Energy Feeds International, LLC*